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Atty. Dkt. No. 023829-0126

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Karleskind et al.
Title: PROTEIN SUPPLEMENTED
BEVERAGE COMPOSITIONS
Appl. No.: 09/883,496
Filing Date: 06/18/2001
Examiner: Anthony J. Weier
Art Unit: 1761

TERMINAL DISCLAIMER

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

Your Petitioner, Cargill, Incorporated, having its principal place of business at 15407 McGinty Road W., Wayzata, Minnesota 55391 (hereinafter represents that it is the owner of the entire right, title, and interest in and to U.S. Patent Application Serial No. 09/883,496, filed June 18, 2001 which is a continuation-in-part of U.S. Patent Application No. 09/717,923, filed November 21, 2000, by virtue of an Assignment of U.S. Patent Application Serial No. 09/883,496 filed and recorded on October 1, 2001, on Reel/Frame 012210/0636, in the United States Patent and Trademark Office, a copy of which is attached hereto as APPENDIX A.

Further, your Petitioner represents that it is the owner of U.S. Patent Application Serial No. 09/883,552, filed June 18, 2001 which is a continuation-in-part of U.S. Patent Application Serial No. 09/717,923, filed November 21, 2000, by virtue of an Assignment of U.S. Patent Application Serial No. 09/883,552 filed and recorded on

10/01/2001, on Reel/Frame 012207/0682, in the United States Patent and Trademark Office, a copy of which is attached hereto as APPENDIX B.

Your Petitioner, Cargill, Incorporated, hereby disclaims the terminal part of the term of any patent granted on U.S. Patent Application 09/883,496 which would extend beyond the full statutory term (including any patent extension under 35 U.S.C. § 154), as shortened by any terminal disclaimer, of any patent granted on U.S. Patent Application 09/883,552, and hereby agrees that any patent so granted on U.S. Patent Application 09/883,496 shall be enforceable only for and during such period that the legal title to any patent granted on U.S. Patent Application 09/883,552 shall be the same as the legal title to any patent granted on U.S. Patent Application 09/883,496, this agreement to run with any patent granted on U.S. Patent Application 09/883,496 and to be binding upon the grantee, its successors or assigns.

In making the above disclaimer, Petitioner does not disclaim any terminal part of any patent granted on U.S. Patent Application 09/883,496, prior to the full statutory term of any patent granted on U.S. Patent Application 09/883,552 as defined in 35 U.S.C. §§ 154-156 and 173, in the event that any patent granted on U.S. Patent Application 09/883,552 expires for failure to pay a maintenance fee, is held unenforceable or is found invalid in a final judgment by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR §1.321(a), has all claims canceled by a reexamination certificate or as a result of an interference proceeding, or is otherwise not deemed to provide the rights conveyed by 35 USC § 154, prior to the full statutory term of any patent granted on U.S. Patent Application Serial No. 09/883,552 as defined in 35 USC §§ 154-156 and 173, except for the separation of legal title stated above. Further, Petitioner does not disclaim any terminal part of a patent granted on U.S. Patent Application 09/883,496 that would extend

beyond the present termination of any patent granted on U.S. Patent Application Serial No. 09/883,552, in the event that such present term is extended by virtue of compliance with the conditions for term extension of any present or future patent term extension provisions of the patent law, including but not limited to 35 U.S.C. §§ 154, 155, 155A or 156, and without waiving Petitioner's right to extend the term of a patent granted on U.S. Patent Application Serial No. 09/883,496 to the extent provided by law.

The undersigned (whose title is supplied below) certifies that he is empowered to sign this Terminal Disclaimer on behalf of the assignee, that he has reviewed the Assignments attached as APPENDICES A and B, and to the best of his knowledge and belief, legal title to U.S. Patent Application Serial No. 09/883,496 and any patent granted on U.S. Patent Application Serial No. 09/883,552 rests with Petitioner, Cargill, Incorporated. The undersigned declares that all statements made herein of their own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application or any patent issuing therefrom.

Respectfully submitted,

Date _____

Cargill, Incorporated

By: _____

Name: _____

Title: _____

beyond the present termination of any patent granted on U.S. Patent Application 09/883,552, in the event that such present term is extended by virtue of compliance with the conditions for term extension of any present or future patent term extension provisions of the patent law, including but not limited to 35 U.S.C. §§155, 155A or 156, and without waiving Petitioner's right to extend the term of a patent granted on U.S. Patent Application 09/883,496 to the extent provided by law.

The undersigned (whose title is supplied below) certifies that he is empowered to sign this Terminal Disclaimer on behalf of the assignee, that he has reviewed the Assignments attached as APPENDICES A and B, and to the best of his knowledge and belief, legal title to U.S. Patent Application 09/883,496 and any patent granted on U.S. Patent Application 09/883,552 rests with Petitioner, Cargill, Incorporated. The undersigned declares that all statements made herein of their own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application or any patent issuing therefrom.

Respectfully submitted,

Date July 31, 2003

Harry J. Gwinnett
Cargill, Incorporated
By: Harry J. Gwinnett
Name: Vice President
Title: Vice President